

No. 24685

**FEDERAL REPUBLIC OF GERMANY
and
FRANCE**

**Agreement relating to co-operation regarding restrictive
business practices. Signed at Paris on 28 May 1984**

Authentic texts: German and French.

Registered by the Federal Republic of Germany on 14 April 1987.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
FRANCE**

**Accord sur la coopération relative aux pratiques restrictives
de la concurrence. Signé à Paris le 28 mai 1984**

Textes authentiques : allemand et français.

Enregistré par la République fédérale d'Allemagne le 14 avril 1987.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE FRENCH REPUBLIC RELATING TO CO-OPERATION REGARDING RESTRICTIVE BUSINESS PRACTICES

The Government of the Federal Republic of Germany and the Government of the French Republic, hereinafter called the Contracting Parties,

Convinced that restrictive business practices are prejudicial to the interests of their two countries,

Affirming their common will to co-operate in combating such practices with mutual respect for their sovereignty,

Noting that such practices sometimes extend beyond the national framework,

Considering that restrictive business practices affecting competition simultaneously in the two countries should be subjected to the most effective possible control,

Considering that the procedures of one Contracting Party in the field of anti-trust law may in certain circumstances harm the national interests of the other Contracting Party,

Recalling that the acts of antitrust authorities pursuant to such procedures constitute sovereign acts performed on behalf of each State by the antitrust authorities of that State,

Reaffirming that the responsibility for the conduct of information research activities rests in the territory of each State with the authorities of that State,

Having regard to the Treaty of 22 January 1963 between the French Republic and the Federal Republic of Germany concerning Franco-German co-operation² and to the Recommendation of the Council of the Organization for Economic Co-operation and Development of 5 October 1979 concerning co-operation between member States with respect to restrictive business practices affecting international trade,

Have agreed as follows:

Article 1. For the purposes of this Agreement,

1. The term "antitrust authorities" shall mean:

- (a) In the French Republic, the Minister for the Economy, Finance and the Budget (Ministre de l'économie, des finances et du budget),
- (b) In the Federal Republic of Germany, the Federal Minister for the Economy (Bundesminister für Wirtschaft) and the Federal Antitrust Office (Bundeskartellamt);

2. The term "procedures" shall include, *inter alia*, the procedures initiated by the French Antitrust Commission;

¹ Came into force on 28 May 1984 by signature, in accordance with article 8.

² United Nations, *Treaty Series*, vol. 821, p. 323.

3. The term “antitrust law” shall refer to the following texts in their version in force at the time when they are applied:

- (a) With respect to antitrust matters, the following French laws and regulations:
- Ordonnance No. 45-1483 of 30 June 1945 concerning prices and Ordonnance No. 45-1484 of 30 June 1945 concerning the detection, prosecution and suppression of violations of business laws,
 - Articles 1 and 4 of Law No. 62-628 of 2 July 1963 (amended finance law for 1963),
 - Law No. 77-806 of 19 July 1977 concerning the control of business concentration and the suppression of unlawful trusts and abuses of dominant position,
 - Articles 37 to 42 of Law No. 73-1193 of 27 December 1973 regulating commerce and trades,
- (b) German restrictive-practice legislation,
and all the texts giving effect to the provisions listed above.

The antitrust rules of the Treaty establishing the European Economic Community¹ and the antitrust rules of the Treaty establishing the European Coal and Steel Community² shall remain applicable.

Article 2. 1. The co-operation between antitrust authorities established between the two Contracting Parties by this Agreement shall take the following forms pursuant to articles 3 to 7, subject to the national laws in force when the Agreement is applied:

- (a) Notification in accordance with the conditions specified in article 6 of the initiation of a procedure concerning application of antitrust law which may affect the interests of the other Contracting Party,
- (b) Communication of information about restrictive business practices at the request of the antitrust authorities of the other Contracting Party,
- (c) Any other co-operation between the antitrust authorities in all antitrust matters of recognized common interest,
- (d) Consultations in accordance with article 7.

2. The domestic procedural rules required for the application of this Agreement shall be issued:

- (a) In the French Republic, by the Minister for the Economy, Finance and the Budget,
- (b) In the Federal Republic of Germany, by the Federal Minister for the Economy.

Article 3. 1. The antitrust authorities of one Contracting Party may request from the authorities of the other Party any information concerning restrictive business practices, mergers of enterprises, business concentration and the state of the market in the territory of the other Party, as well as any information concerning the economic or legal context in which such practices are to be viewed.

¹ United Nations, *Treaty Series*, vol. 298, p. 3 (English translation), vol. 294, p. 3 (authentic French text), vol. 295, p. 2 (authentic German text), vol. 296, p. 2 (authentic Italian text), and vol. 297, p. 2 (authentic Dutch text); see also vol. 1376, p. 2 (authentic Danish text), vol. 1377, p. 2 (authentic English text), vol. 1378, p. 2 (authentic Irish text), vol. 1383, p. 2 (authentic Greek text), vol. 1452, p. 2 (authentic Portuguese text), and vol. 1453, p. 2 (authentic Spanish text).

² *Ibid.*, vol. 261, p. 140.

2. Requests for information concerning businesses subject to the sovereignty of the other Contracting Party shall be addressed to the antitrust authorities of the other Party.

3. The antitrust authorities of each Contracting Party shall, as far as possible, comply with requests for information from the antitrust authorities of the other Party, either on the basis of information already in their possession or on the basis of information which they obtain or cause to be obtained in accordance with the laws in force in the territory of the State to which they belong.

4. When a request for information made by the antitrust authorities of one Contracting Party gives rise to a notification under article 6, such a request may cover all the information regarded as relevant.

5. The antitrust authority to which a request is made shall furnish the information requested as quickly as possible.

Article 4. 1. Requests for information pursuant to this Agreement shall be made in writing and shall be sufficiently accurate. Within the framework of the procedures instituted, the requests shall contain, *inter alia*, the following details:

- (a) The purpose and reason for the request,
- (b) Where known, the names and addresses of the individuals or bodies corporate or the enterprises concerned,
- (c) The urgency of the request,
- (d) The legal basis of the procedure or enquiry in national law.

2. Replies to requests for information shall be made in writing at the request of the anti-trust authorities of the other Contracting Party.

Article 5. 1. The antitrust authorities of each Contracting Party shall have the option of not complying with a request for information addressed to them under this Agreement. This shall apply in particular when the request seeks the communication of information the disclosure of which would infringe the secrecy rules or might impair the sovereignty, security, essential economic interests or public order of the State to which the request is made or when the antitrust authority to which the request is made does not find itself able, for other reasons, to comply with the request for information.

2. If the authority to which a request is made declines to comply with the request, the requesting authority shall be so informed immediately.

Article 6. 1. The antitrust authorities of one Contracting Party shall notify the antitrust authorities of the other Contracting Party of the initiation of a procedure if such a procedure may affect the interests of the other Party. This shall apply in particular when the purpose of the procedure is to investigate restrictive business practices used by enterprises subject to the sovereignty of the other Contracting Party.

2. Notification of the initiation of a procedure may also be made in advance, especially if this seems useful for the information of the authorities of the Contracting Parties or if co-operation for the investigation of a specific restrictive business practice seems indicated.

3. The confidentiality of the information transmitted must be guaranteed in accordance with the laws of the Contracting Party whose antitrust authority receives the information, subject to the conditions laid down by the antitrust authority which

supplies the information. Information obtained pursuant to this Agreement may be used only for the purposes envisaged by the antitrust authorities of the Contracting Parties and within the framework of the co-operation referred to in article 2.

Article 7. 1. When a procedure may affect the interests of a Contracting Party, the antitrust authorities of the said party may enter into consultation with a view to making any observation which they see fit.

2. When the antitrust authorities of both Contracting Parties regard themselves as competent to deal with the whole or part of the same case, they shall consult each other with a view to reaching decisions acceptable to both Contracting Parties.

Article 8. This Agreement shall enter into force on the date of its signature for a period of five years. It shall be renewed for an indefinite period unless denounced in writing by one of the Contracting Parties 12 months before the expiry of the said period of five years. It may thereafter be denounced in writing at any time by either of the Contracting Parties, subject to prior notice of 12 months.

Article 9. This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the French Republic within three months of the date of entry into force of this Agreement.

DONE at Paris, on 28 May 1984, in duplicate, in the German and French languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany:

HANS-DIETRICH GENSCHER
OTTO GRAF LAMBSDORFF

For the Government of the French Republic:

CLAUDE CHEYSSON
JACQUES DELORS
